

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CHICAGO TITLE, a Nevada Corporation,

Plaintiff,

v.

CAPITAL PACIFIC HOLDINGS, LLC., a
Delaware Corporation, SOMERSET SFR,
LLC., a Nevada Corporation, LF LAS VEGAS
REALTY CORPORATION, a Florida
Corporation, and UNION LABOR LIFE
INSURANCE COMPANY, a Maryland
Corporation,

Defendants.

02:08-CV-01078-LRH-PAL

ORDER

Presently before the court is Plaintiff Chicago Title (“Plaintiff”) and Defendants and Crossclaimants LF Las Vegas Realty Corporation (“Las Vegas Realty”), and Union Labor Life Insurance Company (“Union Labor”) Joint Application for Entry of Default Judgment (#34¹). Defendants Capital Pacific Holdings, LLC. (“Capital Pacific”) and Somerset SFR, LLC. (“Somerset”) have not responded in any manner.

I. Facts and Procedural History

On September 1, 1998, Las Vegas Realty sold a parcel of land known as Somerset Ridge II

¹Refers to the court’s docket entry number.

1 and III to Capital Pacific. On July 22, 1999 Capital Pacific, as a seller, and Avant Homes, LLC.,
2 (“Avante”) as a buyer, entered into an agreement for the sale of a number of lots in Somerset Ride.
3 Las Vegas Realty then assigned its rights under utility contracts related to the development of the
4 parcels of land to Avante. Avante subsequently assigned its interest in the agreement to Somerset.

5 On August 3, 1999, Plaintiff became the escrow agent in the transaction. Pursuant to the
6 purchase agreement, either Somerset or Avante deposited a sum of \$77,379.79 to be held in escrow
7 and released to either Las Vegas Realty or Union Labor upon receipt of executed utility contract
8 assignments.² On January 31, 2000, Capital Pacific sold the Property to Somerset. On
9 February 14, 2000, Las Vegas Realty deposited the executed utility contract assignments in escrow.

10 Once escrow closed, each Defendant held an adverse claim to the sums presently held by
11 Plaintiff. On August 15, 2008, Plaintiff filed a complaint seeking to interplead Defendants so that
12 they could settle their respective rights to the sum of money.³ On November 3, 2008, Union Labor
13 and Las Vegas Realty responded to Plaintiff’s complaint and filed a crossclaim against Capital
14 Pacific and Somerset. Since Plaintiff failed to release the money to Las Vegas Realty or Union
15 Labor, Union Labor asserts its entitlement to the \$77,373.79 Avante deposited, contending, “The
16 Union Labor Life defendants and crossclaimants are entitled to the \$77,373.79 held by Plaintiff.”⁴

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18 ²It appears that the relationship between Union Labor and Las Vegas Realty is as follows: “[A]t all
19 times relevant, Union Labor was authorized by [Las Vegas Realty], pursuant to contract, to act as agent for [Las
20 Vegas Realty] in connection with the utility contract assignments and the escrow.” (McGlone Decl. (#34), at
4.)

21 ³“In an interpleader action, the ‘stakeholder’ of a sum of money sues all those who might have claim
22 to the money, deposits the money with the district court, and lets the claimants litigate who is entitled to the
23 money.” *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1265 (9th Cir. 1992). Here, Plaintiff is the
stakeholder and is in possession of the \$77,379.79. Plaintiff has filed a complaint to interplead Capital Pacific,
Somerset, Union Labor, and Las Vegas Realty, who are the claimants.

24 ⁴There is a \$6 discrepancy between the sum of money Union Labor and Las Vegas Realty refer to and
25 the sum of money Plaintiff refers to, which is \$77,379.79. However, in the joint application for default
judgment against Capital Pacific and Somerset, the parties ask the court to award a total of \$77,373.79.

1 (Def. Answer and Crossclaim (#15), at 4.)

2 On August 15, 2008, Plaintiff served Capital Pacific and Somerset with the summons and
3 the complaint (#5-6). To date, Capital Pacific and Somerset have not answered or otherwise
4 responded. On December 18, 2008, Plaintiff requested that the clerk enter the default of Somerset
5 for not filing a responsive pleading to Plaintiff's complaint (#21). On December 30, 2008, Plaintiff
6 requested that the court enter the default of Capital Pacific for not filing a responsive pleading to
7 Plaintiff's complaint (#25). On January 6, 2009, the court entered default for Capital Pacific and
8 Somerset (#26).

9 On December 18, 2008, Las Vegas Realty and Union Labor served Capital Pacific and
10 Somerset with the summons and the complaint (#22-23). On February 4, 2009, Las Vegas Realty
11 and Union Labor requested that the court enter default against Capital Pacific and Somerset for
12 failing to respond to the crossclaim (#31-32). On February 5, 2009, the court entered default for
13 Capital Pacific and Somerset (#33).

14 On March 13, 2009, Plaintiff, Las Vegas Realty, and Union Labor filed the joint application
15 for default judgment against Capital Pacific and Somerset now before the court. In addition to the
16 entry of default judgment against Capital Pacific and Somerset, the parties ask the court to award
17 Union Labor \$74,379.79 of the principal amount and Plaintiff \$3,000 of the principal amount to
18 cover attorneys' fees.

19 **II. Discussion**

20 Obtaining a default judgment in federal court is a two-step process governed by Federal
21 Rule of Civil Procedure 55. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). First, Rule
22 55(a) provides, "When a party against whom a judgment for affirmative relief is sought has failed
23 to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must
24 enter the party's default." Second, a party must seek entry of default judgment under Rule 55(b).
25 While entry of default by the clerk is a prerequisite to an entry of default judgment, "a plaintiff who
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1 obtains an entry of default is not entitled to default judgment as a matter of right.” *See Warner*
2 *Bros. Entm’t Inc. v. Caridi*, 346 F.Supp.2d 1068, 1071 (C.D. Cal. 2004). Instead, whether a court
3 will grant a default judgment is in the court’s discretion. *Id.* (citations omitted).

4 Factors which the court may consider when exercising discretion as to the entry of default
5 judgment include: (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff’s
6 substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action;
7 (5) the possibility of a dispute concerning material facts; (6) whether the default was due to the
8 excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure
9 favoring decisions on the merits. *Eitel*, 782 F.2d at 1471-72.

10 Here, Plaintiff, Las Vegas Realty, and Union Labor allege that the events giving rise to the
11 dispute took place in 1999 and 2000. Since nine years have passed since the initial actions and the
12 parties still have not obtained their desired relief, the parties are likely to be prejudiced by a delay
13 in judgment, especially since it is not clear that Capital Pacific and Somerset will ever respond.
14 Additionally, the court has jurisdiction and the merits of Plaintiff, Las Vegas Realty, and Union
15 Labor’s claims, if taken as true, would be sufficient to support that neither Capital Pacific nor
16 Somerset have a claim to the money under dispute. Furthermore, since Capital Pacific and
17 Somerset did not respond to the complaint in any manner, there has been no showing that the
18 default was due to excusable neglect. Thus, based on the foregoing factors, an entry of default
19 judgment is appropriate.

20 Union Labor, Las Vegas Realty, and Plaintiff seek judgment only against Capital Pacific
21 and Somerset. The parties also ask that \$74,379.79 be awarded to Union Labor and \$3,000 be
22 awarded to Plaintiff. However, Plaintiff and Defendants have not sufficiently established how the
23 money should be distributed, and an entry of default judgment is not the appropriate way to resolve
24 this dispute between the remaining parties. Until the parties can provide the court with a
25 stipulation of dismissal or a settlement agreement formally indicating the parties have agreed to the
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1 disbursal of funds as requested, the court will not order the clerk to disburse the funds. Therefore,
2 to the extent that Plaintiff, Union Labor, and Las Vegas Realty ask for a disbursal of funds through
3 the motion for default judgment, the motion is denied.

4 IT IS THEREFORE ORDERED that Plaintiff's Motion for Entry of Judgment by Default
5 (#34) is hereby GRANTED in part and DENIED in part.

6 IT IS SO ORDERED.

7 DATED this 1st day of July, 2009.

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11 LARRY R. HICKS
12 UNITED STATES DISTRICT JUDGE
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